

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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Federal Communications Commission  
Office of Secretary

In The Matter of

DOCKET FILE COPY ORIGINAL B Docket No. 04-191

San Francisco Unified School District

For Renewal of License for Station KALW(FM),  
San Francisco, California

) Facility ID No. 58830  
) File No. BRED-19970801YA

To: Secretary  
Attention: Richard L. Sippel, Chief Administrative Law Judge

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT BRIEF ON TERMINATION DATE**

1. The Joint Status Report submitted on October 15, 2004, by the Enforcement Bureau ("Bureau") and San Francisco Unified School District ("SFUSD") included a stipulation that the relevant time period at issue in this license renewal period commenced on January 1, 1991, the date the current license term began. The parties stated that they were not in agreement as to the termination date of the relevant period for the issues to be determined at hearing (the "Termination Date").

2. By *Order*, FCC 04M-36, the Presiding Officer required the exchange of briefs by the parties regarding the Termination Date.

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3. SFUSD notes that there are several issues for determination at the hearing. Issues 1-3 were designated in the *Hearing Designation Order* 1/ as follows:

1. To determine whether San Francisco Unified School District falsely certified its application with respect to the completeness of the KALW(FM) public inspection file and the effect thereof on its qualifications to be a Commission licensee.

2. To determine whether San Francisco Unified School District made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its certification in the subject license renewal application that it had placed in the KALW(FM) public inspection file at the appropriate times the documentation required by Section 73.3527, and the effect thereof on its qualifications to be a Commission licensee.

3. To determine, in light of the evidence adduced pursuant to the specified issues, if the captioned application for renewal of license for station KALW(FM) should be granted.

Moreover, the *HDO* provided that:

[I]rrespective of whether the hearing record warrants an Order denying the renewal application for KALW(FM), it shall be determined, pursuant to Section 503(b)(1) of the Communications Act of 1934, whether an ORDER OF FORFEITURE in an amount not to exceed \$300,000 shall be issued against SFUSD for willful and/or repeated violations of Sections 73.1015, 73.3527, and/or 73.3613 of the Commission's Rules, which occurred or continued within the applicable statute of limitations. 2/

The following issue was added by the Presiding Officer in *Memorandum Opinion and Order*, FCC 04M-31 (rel. Oct. 8, 2004):

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1/ See *In The Matter of San Francisco Unified School District For Renewal of License for Station KALW(FM), San Francisco, California, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, FCC 04-114 (rel. July 16, 2004) (the "*HDO*").

2/ *HDO* at ¶ 25 (footnotes omitted).

To determine whether station KALW(FM) has provided meritorious service during the license period justifying renewal of SFUSD's license. 3/

4. SFUSD submits that for Issues 1 and 2 designated in the *HDO*, because these issues relate to certifications made in the 1997 renewal application, the Termination Date is August 1, 1997, the date the renewal application was submitted to the Commission.

5. SFUSD submits that for the forfeiture issue, the *HDO* did not, contrary to the requirement of 47 U.S.C. Section 503((b)(4), "state the date on which such conduct occurred." Instead, the *HDO* only referred to conduct "which occurred or continued within the applicable statute of limitations." 4/ At best, the notice of apparent liability given to SFUSD is that it could be liable for forfeiture for the conduct at issue in designated Issues 1 and 2. As noted above, the conduct at issue in designated Issues 1 and 2 involve the renewal application certifications submitted on August 1, 1997. To the extent that the Presiding Officer deems the *HDO* notice to be sufficient pursuant to 47 U.S.C. Section 503((b)(4), SFUSD submits that the forfeiture issue has a Termination Date of August 1, 1997. 5/

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3/ The Presiding Officer will permit SFUSD to introduce evidence on meritorious service for the one year period prior to the filing of the petition to deny and the one year prior to release of the *HDO*. *Memorandum Opinion and Order*, FCC 04M-31, at ¶ 15

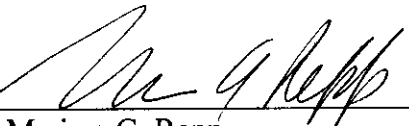
4/ *HDO* at ¶ 25.


5/ SFUSD notes that the forfeiture issue refers to, *inter alia*, Section 73.3613 of the Commission's Rules. See *HDO* at ¶ 25. However, Section 73.3613 refers to the filing with the Commission of contracts and other documents, not ownership reports. The Commission did not cite SFUSD for the failure to submit documents to the Commission pursuant to Section 73.3613 in the *HDO*, only for the alleged violation of Section 73.3615(g), which requires the filing in the public inspection file of ownership reports and supplemental ownership reports. Consequently, the *HDO* did not give notice of apparent liability as required under 47 U.S.C. Section 503(b)(4) that SFUSD might be liable for a forfeiture under either Section 73.3613 or 73.3615(g).

6. As to the third issue in the *HDO* and the meritorious service issue, as set forth in SFUSD's Motion to Enlarge Issues, SFUSD submits that the Termination Date should be July 16, 2004, when the *HDO* was released. Such a Termination Date is warranted here, given that the Commission waited over seven years after SFUSD filed its renewal application before designating this matter for hearing, and given that the D.C. Circuit has recognized that a licensee's "most recent performance [is] most probative," *Monroe Communication Corp. v. FCC*, 900 F.2d 351, 355 (D.C. Cir. 1990).

Respectfully submitted,

**SAN FRANCISCO UNIFIED  
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October 27, 2004

### Certificate of Service

I, Regina Hogan, hereby certify that on this 27<sup>th</sup> day of October, 2004, a copy of the foregoing **San Francisco Unified School District Brief on Termination Date** was sent by hand delivery to:

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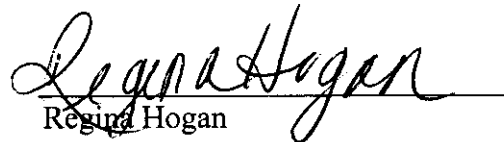
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